

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
Plaintiff

v.

ROBEL KELETA GOITOM,  
Defendant.

NO. CR24-040 RSL

GOVERNMENT'S RESPONSE TO  
GOITOM'S MOTION FOR A *FRANKS*  
HEARING

**I. INTRODUCTION**

Robel Goitom has not met the threshold requirements for the Court to grant a *Franks* hearing. The firearm was lawfully recovered from his vehicle under the automobile exception and in a search incident to his arrest on suspicion of DUI and unlawful possession of a firearm. The firearm would also have inevitably been discovered. These three independent reasons to conclude that the firearm was lawfully discovered mean that the Court should deny Goitom's request for a hearing under *Franks*. And even setting those three reasons aside, Goitom's motion fails to show that Officer French's warrant affidavit contains material false information within the meaning of *Franks*. Goitom's motion should be denied.

## II. STATEMENT OF THE FACTS

On a day in October 2023, SPD Officers French and Lentz saw a Jeep driving on the sidewalk on Aurora Avenue in Seattle around 2:00 am. Exhibit A, Officer French’s In Car Video 00:50–01:10. As Officer French approached Goitom’s car, he saw Goitom placing a gun in the center console. Dkt. 39 at 15–19. The two officers then quickly ordered Goitom to get out of his car. Exhibit C, Officer Lentz’s Body Worn Video at 00:00. Officer French asks Goitom if he had weapons on him and what he had hidden in the center console. Exhibit C, Officer Lentz’s Body Worn Video at 00:13. The officers smelled a strong odor of alcohol on Goitom’s breath and noted that he had slurred, slow, and mumbled speech. They also saw that Goitom’s eyes were glossy and bloodshot, and his eyelids were droopy. Dkt. 39 at 15–19. Officer French ran a criminal history check and learned that Goitom was a felon on federal probation. After Goitom refused to take field sobriety tests, he was arrested for DUI. Officer French returned to Goitom’s vehicle, announcing that “it’s getting towed, so I need to do an inventory search.” Exhibit B, Officer French’s Body Worn Video at 10:31. Officer French opened the center console and found the firearm. *Id.* Officer French exclaimed, “gun” “I knew it, I fucking saw it.” *Id.* at 10:31–10:42.

A few minutes later, when the officers were transporting Goitom to jail, Officer French told Goitom that he saw him put a gun in the center console. Exhibit B, Officer French’s Body Worn Video at 16:25–16:49. Goitom denied doing so. *Id.* Officer French applied for a search warrant to search Goitom’s vehicle for DUI and unlawful firearm possession. Dkt. 39 at 15–19. The warrant affidavit stated that French saw Goitom put the firearm in the center console and described the reasons to think that Goitom was intoxicated. The court authorized a search for evidence of DUI and unlawful possession of a firearm. *Id.*

### III. ARGUMENT

Under *Franks*, a defendant challenging the validity of a search warrant affidavit must show that (1) the affidavit contained false statements or omissions; (2) those false statements or omissions were made knowingly and intentionally, or with reckless disregard for the truth; and (3) the false statements or omissions were “material” in that probable cause would not have existed without them. *Franks v. Delaware*, 438 U.S. 154, 155–56 (1978).

The *Franks* inquiry “begins with a presumption that an affidavit in support of a search warrant is valid.” *United States v. Meek*, 366 F.3d 705, 716 (9th Cir. 2004). To receive a *Franks* hearing, a defendant’s “attack” on a warrant affidavit “must be supported by more than a mere desire to cross-examine.” *Franks*, 438 U.S. at 171. The defendant must make a “substantial preliminary showing” of a *Franks* violation. *Id.* at 155. The *Franks* burden is a “heavy” one. *United States v. Jeffus*, 22 F.3d 554, 558 (4th Cir. 1994). “Allegations of negligence or innocent mistake are insufficient.” *Franks*, 438 U.S. at 171.

Here, Goitom has not carried his burden on any prong of the *Franks* test, let alone all three prongs. He therefore has no right to a *Franks* hearing.

#### A. Goitom identifies no false statement or omission in the affidavit

Goitom cannot overcome the presumption that the affidavit in support of the warrant to search his car was valid. He claims that there are three false statements in the affidavit—that Officer French was driving northbound on Aurora when he spotted Goitom driving on the sidewalk, that he told Goitom to “exit the vehicle and walk in front of my patrol car,” and that he saw Goitom put a gun in the center console. Dkt. 39 at 9. But he concedes that the first two statements were irrelevant to probable cause, *id.* at 10, so the only question here is whether he has made a substantial showing that Officer French’s statement that he saw Goitom put the firearm in the center console was a “deliberate falsehood.” *Franks*, 438 U.S. at 171.

1 Goitom's motion does not make a substantial showing on that point. He says that  
2 Officer French's statement that he saw Goitom put a gun in the center console was false  
3 because the "behavior of the officers and the way they interacted with Mr. Goitom" do not  
4 make it seem like they knew that Goitom had a firearm. Dkt. 39 at 10. In support, he cites  
5 Officer French's testimony in an unrelated case, which he says shows that Officer French  
6 would have arrested Goitom immediately if Officer French knew there was a firearm in the  
7 car.

8 Goitom's argument ignores several key facts. First, the videos of the encounter and  
9 Goitom's arrest show that Officer French did see Goitom put something in the center  
10 console—Officer French asks Goitom what he put in the console shortly after Goitom gets  
11 out of his car. And Officer French repeatedly stated before he wrote the search warrant  
12 affidavit that he knew what Goitom put in the center console—he says that he saw Goitom  
13 put a gun in the center console when he finds the firearm ("I knew it") and in a discussion  
14 with Goitom on the way to the police station. Exhibit B, Officer French's Body Worn  
15 Video at 10:31, 12:20–12:50, 14:15–14:45, 16:21–16:49; Exhibit A, Officer Lentz's Body  
16 Worn Video at 00:14.

17 Goitom nevertheless asks this Court to infer from Officer French's exchange with  
18 Goitom before the arrest, during which Officer French asked Goitom what he put in the  
19 center console but does not say that he saw a gun, that Officer French did not know what  
20 he had seen. Dkt. 39 at 11. But Officer French's decision to ask Goitom what he put in the  
21 console rather than telling Goitom that he knew it was a gun do not mean that Officer  
22 French did not see a gun. Instead, Officer French's questions are best understood as an  
23 investigative attempt to get Goitom to admit that he had a gun.

24 Goitom also asks this Court to infer that Officer French did not see a gun because  
25 (in Goitom's view) Officers French and Lentz did not seem concerned about their own  
26 safety during their encounter with Goitom. But the officers acted quickly here to separate  
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1 Goitom and the firearm; Goitom’s motion estimates that the officers had Goitom out of the  
2 car within six seconds of approaching it, Dkt. 39 at 4. The officers immediately directed  
3 Goitom away from his vehicle and to the front bumper of their patrol car. Exhibit A, Officer  
4 French’s In Car Video at 1:40–1:58. And while Goitom claims that there were pedestrians  
5 in the area (Dkt. 39 at 10), officers were watching the car the entire time and none of the  
6 pedestrians approached the vehicle. Exhibit D, SPD Officer Following Tow Truck 3:20–  
7 26:20. As such, Goitom’s suggestion that the officers would have displayed concern that  
8 someone else would get into the car if they were aware of the firearm is misplaced. Also,  
9 when Officer French questioned Goitom about what he put in the center console, Goitom  
10 was already out of the car and separated from the gun, but Officer French did not yet know  
11 that Goitom had a felony conviction, so keeping the interaction low-key was a reasonable  
12 choice for officer safety.

13 Goitom also says that Officer French’s testimony at a recent hearing in a different  
14 case proves that Officer French did not know that Goitom had a gun because it shows that  
15 Officer French would have handcuffed Goitom as soon as he got out of the car. Dkt. 39 at  
16 10. But Goitom misses a key fact in the hypothetical put to Officer French at that hearing:  
17 “had you know there was a firearm in the car, *since you knew he was a felon*, would that  
18 have altered your conduct in this instance.” *Id.* at 48:3–6. Officer French did not know that  
19 Goitom was a felon during most of the interaction with Goitom, and the officers arrested  
20 Goitom for DUI shortly after they learned that fact. So Officer French’s testimony does not  
21 support Goitom’s argument here.

22 Goitom, at best, has provided a “conclusory allegation” that Officer French lied  
23 about seeing Goitom hide the firearm. This is insufficient to carry his *Franks* burden. The  
24 Court should deny his request for a *Franks* hearing.  
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1           **B. The alleged defects were neither intentional nor reckless**

2           Even if Goitom could show that the statement in the warrant affidavit was false, he  
3 could not show that it was intentional or reckless rather than merely negligent. And  
4 negligence doesn't trigger a *Franks* hearing or suppression. *Herring v. United States*, 555  
5 U.S. 135, 145 (2009); *Franks*, 438 U.S. at 171.

6           Goitom's motion fails to support his claim of deliberately falsity or recklessness.  
7 He concedes by implication that Officer French saw Goitom put *something* into the center  
8 console. Yet he makes no argument that the difference between stating "I saw the driver  
9 put a firearm in the center console" and "I saw the driver put an object that I suspected was  
10 a firearm in the center console" could only be the product of a deliberate attempt to mislead  
11 the magistrate judge, as opposed to imprecision. And if Officer French had made the  
12 second statement instead of the first, he could also have told the magistrate judge that the  
13 driver denied having put anything in the console. Those two facts together—an object that  
14 looks like a firearm plus a suspect's denial that there was any object—amount to articulable  
15 facts suggesting that there was a firearm in the center console, so the imprecise statement  
16 (if it was imprecise) was not reckless or deliberately false.

17           Instead of citing anything in the record to show that Officer French was being  
18 deliberately misleading, Goitom points to a suppression hearing in a different case and says  
19 that "Officer French's veracity as also called into question" in that case. Dkt. 39 at 10 n.1.  
20 But while the district court there granted a motion to suppress, it did not make any adverse  
21 credibility finding and decided the motion without a *Franks* hearing. *United States v.*  
22 *Russell*, CR23-408, Dkt. 89. That proceeding thus fails to provide any support for Goitom's  
23 suggestion that Officer French was deliberately misleading or reckless here.

24           Goitom also argues that Officer French was deliberately misleading or reckless  
25 because he did not tell the magistrate judge that he found the firearm in the console when  
26 he looked in the console after the arrest. But that fact would have bolstered probable cause  
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1 rather than undermined it, so its omission it was not misleading or reckless. Instead, it is  
2 best understood as an effort to set before the magistrate as neutrally as possible the facts  
3 known to Officer French before he confirmed that there was a firearm in the center console.  
4 Goitom's contention that Officer French deliberately misled the magistrate judge is  
5 unsupported.

6 **C. The alleged defects are immaterial to probable cause in any event**

7 If the statement that Officer French saw Goitom put a firearm in the center console  
8 is excised from the warrant affidavit and replaced with a statement that Officer French saw  
9 Goitom put an object that he suspected was a firearm in the center console (along with  
10 Goitom's denial), the magistrate judge would have found probable cause to believe that a  
11 search of the center console would reveal a firearm. But even if the Court disagrees with  
12 that conclusion, the alleged misstatements and omissions here were immaterial because the  
13 warrant affidavit supports probable cause to search the car for evidence of DUI.

14 Officer French's search warrant application sought permission to search Goitom's  
15 car for evidence of unlawful possession of a firearm *and* DUI. Dkt. 39 at 17–19. The search  
16 warrant states that the affidavit sets out probable cause to believe that Goitom was guilty  
17 of “11.56.020 DUI” in addition to unlawful possession of a firearm and authorizes a search  
18 for “evidence of that/those crimes(s); or contraband...or weapons...is concealed in or on  
19 certain premises, vehicles, or persons.” Dkt. 39 at 15–16. Goitom makes no argument that  
20 the search warrant affidavit failed to set out probable cause for the DUI offense or  
21 contained false or misleading statements about Officer French's probable cause to believe  
22 that Goitom drove under the influence. The search warrant would have issued for the DUI  
23 alone, as explained in the government's opposition to the motion to suppress. Goitom's  
24 allegations of falsity are thus immaterial, and his motion must be denied.

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2 **IV. CONCLUSION**

3 The Court should deny Goitom's request for a *Franks* hearing.  
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5 Dated this 6th day of February 2025

6 Respectfully submitted,

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16 *I hereby certify that this pleading contains*  
17 *2,294 words, in compliance with the Local*  
18 *Criminal Rules.*  
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